

Presentation to Energy and Telecommunications Interim Committee

Great Falls, Montana

May 8, 2014

Federal Energy Regulatory Commission (FERC)

Recent Orders:

1. Public Utility Regulatory Policies Act (PURPA)

- “Notice of Intent Not to Act and **Declaratory Order**”
- 146 F.E.R.C. 61,193 (**Mar. 20, 2014**)
- Docket EL13-73

2. Dave Gates Generating Station (DGGS)

- “**Order Affirming Initial Decision**” of Administrative Law Judge (ALJ)
- 147 F.E.R.C. 61,049 (**Apr. 17, 2014**)
- Dockets ER10-1138 and ER12-316

PURPA Order

March 20, 2014

PURPA Order: Background

- June 17, 2013: **Petition for Enforcement and Declaratory Order** filed by
 - Hydrodynamics, Inc.
 - Montana Marginal Energy, Inc.
 - WINData, LLC
- July 19, 2013: **Answer and Motion to Dismiss** filed by the Montana Public Service Commission (PSC), and supportive **Protests** filed by
 - Montana Consumer Counsel
 - NorthWestern Energy
 - Edison Electric Institute
 - National Association of Regulatory Utility Commissioners

PURPA Order: Background Issues

- **50 MW Installed Capacity Limit**
 - PSC-approved tariff limits cumulative purchases from all wind QFs to 50 MW of installed capacity. (December 2006, Order 6501f “cap” applied to all QFs, May 2010, Order 6973d, applied cap only to wind QFs)
 - Eliminated in **Final Order 7199d** (Dec. 2012)
 - Reinstated for QFs > 100 kW in **Order on Motion for Stay 7199e** (Apr. 2013)
- **Montana Rule – ARM 38.5.1902(5)**
 - Makes long-term contracts with large QFs “contingent upon selection of the [QF] by a utility through an all-source competitive solicitation”
 - Amended November 2013 to apply to QFs > 3MW (previously applied to QFs > 10MW)

PURPA Order: Background on LEOs

- **Legally enforceable obligation (LEO)**
 - A Qualifying Facility (QF)
 - “by committing itself to sell to an electric utility [at avoided cost], also commits the electric utility to buy from the QF; these commitments result either in contracts or in **non-contractual, but binding, legally enforceable obligations**”
 - “may seek [PSC] assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a **non-contractual, but still legally enforceable, obligation** will be created pursuant to the state’s implementation of PURPA”
 - Prevents utilities from circumventing PURPA by refusing to sign contracts
- In Montana, “the touchstone of a . . . LEO is **an absolute, unconditional commitment** to deliver energy, capacity, or energy and capacity at a future date.” PSC Order 6444e (May 18, 2010).

PURPA Order: Ruling

Peculiar timing!

FERC does “not intend to go to court to enforce PURPA on behalf of Petitioners; Petitioners thus may bring their own enforcement action against the Montana Commission.”

But FERC did issue “a declaratory order finding that the **50MW installed capacity limit** and the **Montana Rule** are inconsistent with PURPA.”

PURPA Order: Not in Ruling

- FERC did not find inconsistent with PURPA:
 - The use of competitive solicitations to determine avoided cost
 - The PSC's test for creating an LEO

PURPA Order: 50 MW Limit

- “is inconsistent with PURPA’s goal of promoting QF development” because once reached,
 - QFs “cannot obtain **forecasted** avoided cost rates”
 - It “effectively precludes [those] wind QFs . . . from receiving compensation for capacity.”
- “neither the Montana Commission nor NorthWestern has established that a **50 MW installed capacity limit** has any clear relationship to NorthWestern’s actual demand for capacity”

PURPA Order: Montana Rule

- “requiring a QF to win a competitive solicitation as a condition to obtaining a long-term contract imposes an unreasonable obstacle to obtaining a [LEO] particularly where, as here, such competitive solicitations are not regularly held”
- Is inconsistent with PURPA “*to the extent that* it offers the competitive solicitation process as the only means by which a QF greater than [3 MW] can obtain long-term avoided cost rates.”

Declaratory Order: PSC Response?

- No official action yet
- Possibilities:
 - Amend QF-1 Tariff to eliminate 50 MW Limit?
 - PSC could lift stay granted in Order 7199e
 - NorthWestern could withdraw its appeal of Order 7199d
 - Invite comments about potential rulemaking?

DGGS Order

April 17, 2014

DGGS Order: Background

- August 2008: NorthWestern seeks pre-approval of DGGS by MPSC
- May 2009: MPSC pre-approves DGGS
- August 2009: DGGS groundbreaking
- April 2010: NorthWestern seeks to recover **20%** of total cost of DGGS through **FERC's Schedule 3 Tariff**, opposed by:
 - Montana Large Customer Group
 - Central Montana Electric Power Cooperative, Inc.
- December 2010: DGGS completed
- September 2012: FERC ALJ rejects most of NorthWestern's request, only allowing about **4%** of DGGS costs into **Schedule 3**

DGGS Order: Background on Issue

- Northwestern must offer transmission customers “Regulation and Frequency Response Service” under **Schedule 3**
- Regulation service is “the necessary ancillary service that provides the moment-to-moment balancing of resources and load within a balancing authority to maintain interconnection frequency

DGGS Order: Initial Decision Affirmed

“the Schedule 3 rates proposed by NorthWestern have not been shown to be just and reasonable”

FERC ordered NorthWestern to make refunds
to Schedule 3 customers with interest
within 30 days (NorthWestern
reserved \$27M as of 3/31/14)

DGGS Order: Discussion

- “the purpose of the hearing was to determine whether NorthWestern’s **Schedule 3** rate was just and reasonable, not to ensure that NorthWestern collects the total revenue requirement for [DGGS] through regulation service rates”
- “To accept NorthWestern’s argument . . . might in fact encourage transmission providers to build generation facilities solely to provide ancillary services . . . without regard to the economic value of such facilities.”
- “NorthWestern is not precluded from making a showing in a separate proceeding to recover such costs under **Schedule 10**.”

Questions?